

**STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services**

In the matter of

XXXXX

Petitioner

File No. 85560-001

v

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
this 28th day of December 2007
by Ken Ross
Acting Commissioner

ORDER

**I
PROCEDURAL BACKGROUND**

On October 3, 2007, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on October 10, 2007.

The Commissioner notified Blue Cross and Blue Shield of Michigan (BCBSM) of the external review and requested the information it used in making its adverse determination. The Office of Financial and Insurance Services received BCBSM's response on October 26, 2007.

The Petitioner is enrolled for group health coverage through Michigan Education Special Services Association (MESSA). The issue in this external review can be decided by analyzing MESSA's *Super Care I 2003 Revision Plan Coverage Booklet* (the Booklet), the contract defining the Petitioner's health coverage. BCBSM underwrites this coverage and MESSA

administers it. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7).

The Commissioner did not request a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner received occupational therapy services from March 14 through April 10, 2007 provided by XXXXX, a licensed occupational therapist. BCBSM denied payment for this care.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference and issued a final adverse determination dated August 7, 2007, confirming its denial of coverage.

III ISSUE

Did BCBSM correctly deny coverage for the occupational therapy the Petitioner received from March 14, 2007 through April 10, 2007?

IV ANALYSIS

BCBSM's Argument

BCBSM says that the Booklet in this case provides that occupational therapy is a covered benefit if obtained in the outpatient department of a hospital, a physician's office, or a freestanding facility. The care provided by XXXXX is not a covered benefit since she is an independent occupational therapist and does not practice in a hospital, physician's office, or free standing facility.

Occupational therapy provided to the Petitioner by XXXXX in past years was reimbursed in error. The Petitioner was notified two years earlier in an April 7, 2005 letter from MESSA Member Services that its past payment for XXXXX treatment had been made in error. The letter stated:

MESSA has made previous payments to this provider in error. MESSA has made an administrative decision to cover future charges for 30 days from the date of this letter, after the 30 days, future charges will not be covered under your MESSA medical plan.

Therefore, BCBSM argues, the Petitioner was on notice that care provided by XXXXX after May 2005 was not a covered benefit and would not be paid. Therefore, BCBSM says it was appropriate to deny occupational therapy provided to the Petitioner by XXXXX from March 14, 2007 through April 10, 2007.

Petitioner's Argument

Petitioner argues that the MESSA insurance contract covers 90% of the occupational therapist bill, with no exceptions. She says that MESSA refuses to pay on the grounds that the service was not performed by a physician. Because only therapists perform therapy, under MESSA's interpretation of the contract, therapy would never be paid.

Petitioner argues that the refusal to pay for occupational therapy performed by an independent therapist is illegal, discriminatory, and interferes with the doctor-patient relationship.

From February 2002 to May 2005 MESSA paid the bills submitted by XXXXX. Consequently, for at least two years after publication of the Booklet MESSA treated these occupational therapy services as a covered benefit, even though the progress notes showed that she was working and billing as an independent occupational therapist. These actions are powerful evidence of MESSA's own interpretation of the contract.

The Petitioner believes that her occupational therapy services are a covered benefit and BCBSM is required to pay for them.

Commissioner's Review

The Booklet sets forth how benefits are paid. The Booklet provisions related to the occupational therapy benefit are quoted below.

Section 15: Therapy Benefits

The following therapy services are paid as indicated below if obtained in the outpatient department of a hospital, a physician's office, freestanding facility or by an independent physical therapist. Therapies must be medically necessary and ordered by and performed under the supervision or direction of a legally qualified physician except where noted. Benefits include the following:

* * *

15.3 Occupational therapy

Services are paid at 90 percent of the approved amount after you have met your deductible.

Services must be performed by:

- A doctor of medicine or osteopathy
- An occupational therapist
- An occupational therapy assistant under the direct supervision of an occupational therapist
- An athletic trainer under the direct supervision of an occupational therapist

NOTE: Both the occupational therapist and the occupational therapy assistant must be certified by the National Board of Occupational Therapy Certification and registered or licensed in the state where the care is provided.

No information was provided in this case which would indicate that the Petitioner's occupational therapy was provided in the outpatient department of a hospital, a physician's office, or a freestanding therapy facility. In the absence of evidence that the therapy was provided in one of these required locations, the therapy is not a covered benefit under the provisions of the Booklet.

BCBSM and MESSA recognized that in past years the Petitioner's occupational therapy had been paid in error. That information had been communicated to the Petitioner in MESSA's letter of April 7, 2005.

The Commissioner finds that the occupational therapy provided to the Petitioner by XXXXX is not a covered benefit.

V ORDER

Respondent BCBSM's final adverse determination of August 7, 2007, is upheld.

BCBSM is not required to cover the occupational therapy provided to the Petitioner from March 14, 2007 until April 10, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Acting Commissioner